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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/629,629	07/30/2003	Giovanni De Martin	37976/GM/ps	9127

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EXAMINER

GARRETT, ERIKA P

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 06/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

EA

Office Action Summary	Application No. 10/629,629	Applicant(s) DE MARTIN, GIOVANNI	
	Examiner Erika Garrett	Art Unit 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on amendment filed on 4/6/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9,18-24,26 and 31-33 is/are rejected.
- 7) ☒ Claim(s) 10-17,25 and 27-30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: the second rod in claim 33 is not disclosed in the specification.

Appropriate correction is required.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second actuation rod must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New

Art Unit: 3636

Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 3-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 3-30, the phrase "box-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Regarding claims 1 and 3-33, the phrase "so as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Objections

Claim 33 is objected to because of the following informalities: the second actuation rod is not disclosed in the specification. Appropriate correction is required.

Claim 24 is objected to because of the following informalities: claim 24 depends from a deleted claim 2. Note: the examiner is assuming that it should depend from claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3-9, 24, 26 and 31-33 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by Ito (6,033,020). In regards to claims 1 and 33, Ito discloses the use of a mechanical device comprising: a single plate (3) having upper and lower surfaces and being fixedly connectable at the upper surface under a chair for joint oscillation; a first seat formed in the single plate at the lower surface thereof; a box shaped body partially accommodate at the first seat the box shaped body having a base that is connectable to a central column for supporting the chair; an intermediate element (6) that is mounted pivoted inside the box shaped body, under the single plate, to be able to perform combination rotation and translation motion; oscillation compensation means (see abstract, columns 1,6) that interact with said single plate to compensate oscillation thereof; actuation rod (5) transversely connected with said single plate for actuating the intermediate element to perform the combined rotation and translational motion. In regards to claim 3, wherein said first seat is shaped complementarily to said

Art Unit: 3636

box body and is formed by a ridge (11) that protrudes, in use, perimetrically downward from said single plate. In regards to claim 4, wherein said ridge is substantially oval in plan view, and triangular with rounded corners in transverse cross-section. In regards to claim 5, wherein said box body comprises the base (8) that is substantially flat and oval and a hollow connecting stem (25) for connection to said central column, said connecting stem protruding, in use, downwardly in an off-center position of said single plate, see figures 1 and 8. In regards to claim 6, further comprising a lateral edge that protrudes perimetrically vertically from said base of said box shape body and is directed, in use, upwardly; two first supporting holes (fig.11) formed transversely to said edge; and a transverse pivot mounted at said first supporting hole for mutually pivoting said box shape body and said single plate. In regards to claim 7, wherein said two first holes face each other and are formed in said lateral edge along an axis that is perpendicular to an axis of said stem and to a longitudinal central axis of said box-shape body, and are provided with two supporting bushes for said transverse pivot. In regards to claim 8, comprising pairs of second holes (13) formed in said ridge of said single plate, along a common axis with said pivot, the free ends of said pivot protruding externally to said bushes, so as to be accommodated in said pairs of second holes. In regards to claim 9, wherein the actuation rod (5) comprises a first portion and a second portion, which are substantially straight, lie on a same axis, and are connected to each other by a third C-shaped portion, said third portion being accommodated inside said box-shape body, so as to interact with said intermediate element (6), see figure 11. In regards to claim 24, wherein the oscillation compensation means is connectable with

Art Unit: 3636

the single plate after assembly of the oscillation compensation means. In regards to claim 26, wherein said box body and said single plate is press shaped in a single sheet of metal. In regards to claim 31, further comprising bayonet-type coupling that couples the oscillation compensation means to the single plate. In regards to claim 32, further comprising an action rod transversely connected with the single plate to perform translation motions between two end positions, a first one in which the single plate is allowed to freely rotate, a second one in which the single plate is locked in rotation.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito (6,033,020) in view of Liu (5,762,399). Ito shows the use of all the claimed invention but fails to show the use of a first and second half-shell. Liu teaches the use of a first half-shell (94) and a second half-shell (93). It would have been obvious to one of ordinary skill in the art at the time of invention to modify the compensation means with a first and second half-shell as taught by Liu, in order to rock the seat relative to the adjusting base.

Allowable Subject Matter

Claims 10-17,25 and 27-30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 4/6/05 have been fully considered but they are not persuasive.

In response to applicant's argument that *Ito fails to disclose "a single plate first seat having a box- shape body"*. The examiner is of the opinion that Ito does disclose a single plate first seat having a box shape body as shown on figures 2-8.

In response to applicant's argument that *Ito fails to show an "oscillation compensation means"*, a recitation of the intended use of the claimed invention must result in **a structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. The examiner is of the opinion that the seat is capable of in fact performing an oscillation compensation means as disclosed in the specification the Ito reference. **If the prior art structure is capable of performing the intended use, then it meets the claim.** See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 571-272-6859. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EG
June 16, 2005


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